

NORMAN E. BROOKS

IBLA 80-195

Decided May 27, 1980

Appeal from decision of Oregon State Office, Bureau of Land Management, holding Madeline, Poloris, and Manganese mining claims abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment --
Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located prior to Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. The fact that the Post Office assured the claimant that the documents would reach the Oregon State Office by Oct. 22, 1979, will not excuse the late filing.

APPEARANCES: Norman E. Brooks, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Norman E. Brooks appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated November 1, 1979, declaring the Madeline, Poloris, and Manganese mining claims abandoned and void. BLM stated that his filings and service fees were returned because the mining claim filings for these claims were not received on or before October 22, 1979, the date for filing claims located before

October 21, 1976, as required by the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and 43 CFR 3833.1-2(a). The decision indicated that failure to file within the time limits shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void.

On appeal, appellant notes that his filings were received on October 23, 1979, instead of October 22, 1979. He said that when he mailed the filings the Post Office assured him that they would reach the BLM Office October 22, 1979.

[1] Section 314(b) FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

The pertinent regulation, 43 CFR 3833.1-2(a), reads as follows:

[§] 3833.1-2 Manner of recordation--Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location [of the claim or site, a certificate of location 1/] containing the information in paragraph (c) of this section shall be filed.

The above quoted regulation notes that "file" shall mean being received and date stamped by the proper BLM office. Therefore, the documents had to be received and date stamped by the Oregon State Office by October 22, 1979, in order to be filed timely. Ray F. Coffee, 47 IBLA 217 (1980); John Sloan, 47 IBLA 146 (1980); C. F. Linn, 45 IBLA 156 (1980). The documents were not date stamped by the State Office until October 23, 1979. Failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) and 43 CFR 3833.4. The fact that the Post Office

1/ The bracketed language was inadvertently omitted from 43 CFR 3833.1-2(a) (1979) upon printing. The correctly promulgated regulation appeared at 44 FR 20430 (Apr. 5, 1979).

assured him that the documents would reach the BLM office by October 22, 1979, will not excuse the late filing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Appellant states a representative of the United States Postal Service informed him that the filings postmarked in Hawaii on October 19, 1979, would be received at the Portland BLM by October 22. I would afford BLM the opportunity to rule on this statement. If the facts are as represented, appellant has done everything which could reasonably be expected. I would rule that there has been substantial compliance with the purpose of the statute. See Stasher v. Harger-Haldeman, 58 Cal. 2d 23, 3 P.2d 649 (1962); 2A C. Sands, Statutes and Statutory Construction, at 459-60 (1973). Cf. as to estoppel, Edward L. Ellis, 42 IBLA 66 (1979); Public Service Co. of Oklahoma, 38 IBLA 193, 203-10, (1978), (Dissent).

Joseph W. Goss
Administrative Judge

